IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Smt.Umrao Devi and ors.
Versus
State of Rajasthan

S.B. CIVIL WRIT PETITION NO.2969/1997

Date of Order : 21 September , 2007.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Bajrang Lal Sharma, Sr. Advocate with Shri Chandra Shekhar Sharma for petitioners.
Shri Bharat Vyas, Addl. Advocate General with Shri Sandeep Pathak for the State.

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Petitioner Smt.Umrao Devi, who is widow of late Shri Gulab Chand Chekdar, has filed this writ petition praying for a mandamus to be issued against the respondents that award dated 24/7/1976 in regard to acquisition of her lands and the order dated 16/5/1996, dated 7/10/1996 and

14/11/1996 directing to make payment of compensation instead of allotting land as was originally proposed be quashed and set-aside.

2) Husband of petitioner Smt.Umrao Devi, late Shri Gulab Chand Chekdar, was recorded khatedar of the agriculture land bearing Khasra Nos.6 to 13 measuring 75 bighas and 5 biswas situated at Khawasji ka Band, Near Durgapura Railway Station, Jaipur. This land was acquired by the then Government of Jaipur in the year 1945 for establishing dairy farm. Thereafter, when that project was not materialized, the Government vide order dated 27/10/1953 (Annexure-1) allotted to the husband of petitioner-Smt.Umrao Devi in exchange of the acquired land the land measuring 57 bighas and 18 biswas of land in village Gojha and 17 bighas of land in

village Gaj Singhpura, Tehsil, District Jaipur and also awarded compensation for Rs.2216/- for improvements. Before however possession of that land could be given, Gulab Chand Chekdar expired in 1953 and after much pursuation, the Government finally on 4/8/1964 wrote to Collector Jaipur for allotment of 75 bighas and 4 biswas of land in village Goner to the petitioners. When possession of even that land was not given, the petitioners made a representation to the authorities. Thereupon, the government vide order dated 8/3/1968 (Annexure-3) decided to give another piece of land in exchange of acquired land bearing Khasra No.176/1 measuring 73 bighas and 5 biswas situated in village Ajeetgarh, Tehsil Srimadhopur, District Sikar to the petitioners

determining the rent of Rs.18.31. Petitioners were though not satisfied because value of that land according to them was not even 1/10th of the value of the land which was acquired from the husband of petitioner No.1, but she accepted that allotment and simultaneously served a notice under Section 80 CPC on the respondents on 17/7/1968 (Annexure-4) claiming allotment of further land and compensation in lieu thereof on the premise that the land which was acquired was situated within the jurisdictional area of the Jaipur Development Authority. It was on that basis that the government entered into an agreement with the petitioner No.1's representative Shri Duli Chand Jain on 4/10/1972 and agreed to allot 2 bigha of land out of Khasra No.21 situated at Jhalana

Doonger in full and final settlement of her claim. The government made allotment of that land vide order dated 18/10/1972 (Annexure-6) possession of which was also handed over to the petitioner on 19/10/1972 (Annexure-7) and mutation entry to this effect was made in the revenue record vide entry dated 27/10/1972 (Annexure-8). Petitioner was however surprised to receive a notice under Section 9 of the Land Acquisition Act, 1953 (for short, the “Act of 1953”) informing that this land was under acquisition and notification under Section 4 of the Act of 1953 was also issued on 26/7/1969 and published in the official Gazette on 21/8/1969 on the premise that this land was sewai chak land and notification to this effect under Section 6 of the Act of 1953 was issued on 28/2/1973.

Petitioner alleged that she was deprived of opportunity of raising objections against acquisition and consequent hearing provided under Sections 4(5) and 5A of the Act of 1953. Even then, the award was passed on 24/7/1976 for acquisition of the land though physical possession of the land remained with the petitioner which continued to be with her even upto filing of the writ petition. The respondents however are claiming to have taken the paper possession thereof. Petitioner made further representation to the authorities and on much pursuation, the Government of Rajasthan vide letter dated 28/8/1978 addressed to the Secretary UIT, Jaipur to informed that the government has decided to withdraw the acquisition proceedings and pursuant to the decision of the Government, the possession

of the land was directed to be handed over to the petitioner. In the meanwhile, petitioner moved an application before the Civil Court for staying the reference proceedings u/S.18 of the Land Acquisition Act. In the changed circumstances, the Civil Court vide order dated 24/3/1979 stayed the further proceedings of the reference proceedings for the time being. The government still thereafter did not do the needful. The petitioner then submitted number of representations and finally the respondent-UDH department after hearing learned counsel for the parties confirmed the earlier order dated 28/8/1978 vide order dated 25/11/1991 and petitioner was directed to be given the possession of the 2 bighas of land arising out of Khasra No.21 situated at Village Jhalana Doonger forthwith. When

this order too was not complied with, petitioner sent a notice for demand of justice on 23/12/1995 (Annexure-18) to the Secretary UDH Department. Thereupon, Deputy Secretary, UDH vide order dated 16/5/1996 (Annexure-19)directed the Land Acquisition Officer, Jaipur Development Authority Schemes, Jaipur to pay to the petitioner the compensation by reviewing the orders 28/8/1978 and 25/11/1991 earlier passed. Thereupon, Land Acquisition Officer sought clarification from the Government vide letter dated 7/10/1996 (Annexure-21). Thereupon, Deputy Secretary, UDH Department vide letter dated 14/11/1996 informed the Land Acquisition Officer that compensation of the said land in the sum of Rs.6000/- had already been deposited in the Civil Court on 19/12/1977 and the petitioner may collect

the same from that court. It is in the backdrop of these facts that the present petition has been filed praying for a mandamus in terms of the prayer extracted above.

3) I have heard Shri Bajrang Lal Sharma, learned Senior Advocate for the petitioner and Shri Bharat Vyas, learned Additional Advocate General for the State.

4) Shri Bajrang Lal Sharma, learned Senior Counsel for the petitioner argued that the land in question was allotted to the petitioner in view of her land earlier acquired, the very same land could not be re-acquired thereafter. This is colourable exercise of powers. Even otherwise the land was recorded as sewai-chak, the government could not acquire its own land. Furthermore, it was obligatory upon the respondents to

allot an encumbered piece of land to the petitioner and petitioner cannot be made to suffer on account of the negligence of the government officers. Shri Bajrang Lal Sharma, learned Senior counsel for the petitioner in support of the argument has relied on the judgment of the Hon'ble Supreme Court in **Collector of Bombay Vs. Nusserwanji : AIR 1955 SC 298, Sharda Devi Vs. State of Bihar and another : 2003(3) SCC 128 and Sumitra Devi Anand (Dead) by L.Rs. Vs. Shanti Devi (Dead) by L.Rs. : AIR 2005 SC 545**. He further argued that the petitioner and her husband have always been vigilant in agitating their grievances. Two biaghs of the land of Khasra No.21 situated in Jhalana Doonger was awarded to the petitioner in view of agreement dated 4/10/1972. Government vide order dated

28/8/1978 decided to de-acquire the land which decision was reaffirmed by the U.D.H. Minister vide order dated 25/11/1991. Thereafter therefore no question arises to review that order to again acquire the same land particularly when subsequent orders were set-aside. It has been argued that delay by itself would not defeat the claim of the petitioner for relief unless the possession of the respondent has been retrievably altered or the respondent has been put to some undue hardship. It is argued that the allotment of any of the land of the same value to the petitioners even at this stage would not cause any hardship to the respondent. The learned counsel for the petitioners has in support of this argument, relied on the judgment of Hon'ble Supreme Court in **Hindustan Petroleum Corporation**

Ltd. and another Vs. Dolly Das : (1999) 4 SCC 450.

5) On the other hand, Shri Bharat Vyas, learned Additional Advocate General argued that the petitioner in substance is seeking land as compensation for acquisition of 2 bighas of his land which is not permissible in view of law laid by the Hon'ble Supreme Court in **J.D.A. Vs. Radhey Shyam 1994(4) SCC 270, J.D.A. Vs. Daulat Mal Jain 1997(1) SCC 35** and **Narpat Singh Vs. State : 2002(4) SCC 666.** Shri Bharat Vyas argued that the writ petition is enormously delayed inasmuch as, no relief can be claimed by the petitioner in respect of an award which was passed as back as on 24/7/1976 in a writ petition filed in the year 1997. Subsequent orders are only consequential in nature. It was argued that petitioner has not come out with

clean hands because original writ petitioner died on 25/3/2000 and his legal heirs were brought on record within 90 days from the date of her demise. The writ petition therefor abated. The petitioner filed an application on 29/1/2002 and all this delay they have sought to explain by asserting that they chanced upon certain papers related to the writ petition on 28/1/2002. It was stated that such statement made by the writ petitioner in para 15 was misleading besides being incorrect. The petitioners have been pursuing their case before the government much therebefore. Copy of the representation submitted by the petitioner to the government on 19/1/2002 as placed on record would indicate that a reference about filing of the present writ petition by the original petitioners have

been made. It was argued that Nalin Kumar Godika claim to have acquired the right in this land by virtue of a will executed in their favour by late writ petitioner Umrao Devi. The petitioners filed an application before the competent authority on 19/1/2001. It was argued that reference proceedings initiated at the instance of the petitioner was kept in abeyance and not decided therefore petitioner cannot avail of remedy of the present writ petition. Even if it is accepted for the sake of argument that sewai-chak land could not be acquired by the government, character of that land ceased to be sewai-chak when it was allotted in favour of the petitioners and mutation was also entered in their name. If thereafter it came in the khatedari of the petitioners, defect if any stood cured when the notification was

issued under Section 6 of the Act of 1953. In fact, the State of Rajasthan in their reply have disowned the order passed by the UDH Minister on 25/11/1991 by relying on Section 48 of the Act of 1953 that the petitioner's land having been taken possession or the government could not withdraw from acquisition. It was therefore prayed that the writ petition be dismissed.

6) I have given my earnest consideration to the rival submissions made by the parties at the bar and have perused the material on record as well as the case law cited at the bar.

7) Considering first of all the objection raised by the learned Additional Advocate General about the maintainability of the writ petition on the ground that petitioner has not come out with clean

hands, it would be evident from the record that the original writ petitioner died on 25/3/2000 and the application for bringing his legal representatives on record was belatedly filed on 30/1/2002. The petitioners sought to explain this delay by stating that they came to know about filing of this writ petition on 28/1/2002. But this fact stands falsified from the representation which they made to the government on 19/1/2001 in which they have made specific reference to this writ petition. Even otherwise, whatever has been prayed for in the writ petition is founded on the award of the Land Acquisition Officer passed way back on 24/7/1976. The writ petition against such award was filed almost 21 years thereafter. Even if we go by what petitioner contends that the government have

decided to withdraw from acquisition as per the order of the UDH Minister passed on 25/11/1991, the writ petition was filed in 1997, six years still thereafter. Going by the date of the order passed by the Civil Court on 24/3/1979 for keeping reference proceedings in abeyance, filing of writ petition enormously delayed thereafter in 1997 would be liable to be dismissed for delay and latches. In the facts of the case, therefore, it cannot be said that allotment of land to the petitioners now after so much of enormous delay would not cause any prejudice to the respondents. The ratio of the judgment cited on behalf of the petitioners in the case of Hindustan Petroleum Corporation Ltd. supra, therefore, does not apply to the facts of the present case.

8) The argument that the government passed the order withdrawing from acquisition and therefore for that reason now they were left with no other remedy except to file this writ petition, cannot explain the inaction on the part of the petitioners, for they should have timely approached this Court and that too within reasonable time. Even otherwise, as rightly pointed out by Shri Bharat Vyas, learned Additional Advocate General that claim of the petitioner in reference application was merely consigned to record and having not been considered on merits, the writ petition would not be maintainable in so far the question with regard to enhancement of compensation is concerned. In my view, the petitioners cannot be permitted to challenge acquisition proceedings after such a belated

stage.

10) Judgments cited by the petitioner on the point that the government cannot acquire its own land do not have any bearing because even if land was recorded as sewai-chak land when notification under Section 4 of the Act of 1953 was issued, that irregularity stood cured because names of the petitioners were mentioned in the notification issued under Section 6 of the Act of 1953 in recognition of the fact that during interregnum period, petitioners had been recorded khatedar tenant in the revenue record and mutation was also opened in their name. The judgments cited by the learned counsel on this aspect are therefore distinguishable on facts.

11) In totally of the circumstances, therefore, I do not find any good reason to issue a mandamus of the nature which has

been prayed for by the petitioners.

The writ petition which is devoid of merit is therefore dismissed with no order as to costs.

(MOHAMMAD RAFIQ), J.

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